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STANDLEY LAW GROUP LLP 6300 Riverside Drive Dublin, OH 43017			EXAMINER WRIGHT, PATRICIA KATHRYN	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/765,112
Filing Date: January 18, 2001
Appellant(s): LANG, KARL

Stephen L. Grant
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed November 17, 2008 and the Supplemental Appeal Brief filed December 10, 2008, appealing from the Office action mailed February 13, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct.

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner: claims 2-29, 35, and 37-38 under 35 U.S.C. 103(a) as being unpatentable over US Patent no. 4,338,280 to Ambers et al. (hereinafter "Ambers").

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

3,552,212	OHLIN	1-1971
5,650,122	HARRIS et al.	7-1997

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 2-29 and 35-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent no. 3,552,212 to Ohlin in view of US Patent 5,650,122 to Harris et al., (hereinafter Harris).

Ohlin discloses a device for cleaning the exterior of instruments, such as transfer devices. The device comprises an instrument holder (22) including a holder device (reads on ring; no reference No. in Figs 1-2). The instrument holder is connected to a vertical post (23) on housing (11). The ring surrounds the transfer instrument entirely. The vertical post is mounted for axial reciprocation and rotation. A washing device (24)

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is provided to wash the transfer instruments. The washing device is located vertically below the transfer instruments. The washing device contains a passageway (34), through which wash fluid flows into a recess (31) where the transfer instruments are contacted with the wash fluid. The washing device is separate from the instrument holder.

With respect to the wash device (24) being movable relative to the instruments being cleaned, Ohlin teaches that the collar of the wash device need not be stationary while the body to be cleaned is displaceable, but the collar may move while the instrument being cleaned is stationary (col. 3, lines 51-53). Thus, the wash device may be movable in relation to the instrument being cleaned. Presumably, a drive mechanism allows the instrument and/or wash device to be movable. The housing (11) serves as a constraint to limit the movement of the vertical post. See figures 1-3.

Ohlin differs from the instantly claimed invention in that there is no disclosure of a jet orifice that sprays wash fluid at the instruments that are to be cleaned or the holder element with at least two apertures, each arranged to hold one of the two at least two instruments.

Harris teaches an analysis instrument having a wash manifold (486) for washing aspiration tubes. The wash manifold is charged with a high pressure stream (i.e., jet stream) of wash solution by a pump. The wash manifold has multiple wash tubes (484), each of the wash tubes having a fluid outlet/orifice (488) to direct wash solution at the aspiration tubes (see col. 15 lines 26-45 and Fig. 14). The tubes Harris further teaches that the fluid outlets are angled toward the aspiration tube at an angle of about 15

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degrees, as recited in claims 8, 9, 15, 16 and 17. Harris teaches that the diameter of the outlet is 0.027 inch (0.68 mm), as recited in claims 12-14. Further, Harris teaches that in spraying the wash solution, an agitated scrubbing action is provided and the time required to conduct the wash cycle is reduced. See col. 15, lines 26-45.

Thus, it would have been obvious to one of ordinary skill in the art to include in the device of Ohlin the jet orifices directed at an angle, as taught by Harris, to enhance the washing process (because of the scrubbing action provided by spraying) and thus reduce the time needed to completely wash the instruments.

With respect to the claim recitation that the instrument holder including a holder device with at least two apertures, each aperture arranged to receive and hold an instrument, one of ordinary skill in the art would recognize that more than one instrument could fit into the holder device (reads on ring in Figs. 1 and 2) of Ohlin; thus, it would be obvious to include in Ohlin a holder device with at least two apertures since the ordinary artisan would expect that this would increase instrument washing throughput. Furthermore, the court has held that mere duplication of parts (i.e., more than one receptacle) has no patentable significance unless a new and unexpected result is produced. See MPEP 2144.04 and *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960).

(10) Response to Argument

In response to the previous rejection of claims 2-29 and 35-38 over Ohlin (US Patent No. 3,552,212) in view of Harris (US Patent NO. 5,650,122), appellant alleges that Ohlin '212 fails to teach a holder element that passes two instruments through the central opening of a wash device. Appellant asserts that the Ohlin device, if used with more than one instrument, loses its stated purpose to prevent liquid dropping from the bore 26 into the sample tube 15. Appellant cites col. 3, lines 42-45.

The examiner respectfully disagrees that the passage of more one instrument through the opening (bore 26) of the wash device of Ohlin would necessarily cause liquid dropping from the bore 26 into the sample tube 15. Ohlin teaches it is the amount of suction applied to the bore from suction device that ensures that no wash-liquid drops from the bore 26 into the sample tube 15, not the diameter of the bore 26 (see col. 2, line 63-col. 3, line 15.) In fact, Ohlin states at col. 3, lines 33+, that the shape of the bore 26 the relative dimensions of the bore and the probe portion 19 to be cleaned are not critical.

Appellant argues that the high entrance point for the wash-liquid in Ohlin is not conducive to the use of a jet orifice being aimed a predetermined downward angle due to the upwardly expanding diameter of the recess 31 would interfere with the flow.

The examiner respectfully disagrees. First, the claims not recite a distance between the entrance point of the wash liquid and the jet orifice. Therefore, appellant's unsubstantiated statement that the downward angle due to the upwardly expanding diameter of the recess 31 would interfere with the flow is not germane to the argument.

Furthermore, appellant's Figs. 5a-b illustrate the wash ring 125 having an upwardly expanding diameter and jet orifices 41 being aimed a predetermined downward angle.

Appellant argues that Ohlin does not teach a wash ring having a distributor channel for the fluid that extends along the perimeter of the wash ring, as required by claim 18. The examiner respectfully points appellant's attention to the recess 31 in Ohlin.

Appellant argues that Ohlin '212 teaches that the presence of the instrument 19 in the bore 26 allows a reservoir 32 of the wash liquid to accumulate (Fig 3). Appellant concludes that one of ordinary skill would recognize that the use of jet orifices as in Harris '122 to provide the liquid into the reservoir space would cause significant splashing and be antithetical to the concept of an accumulated reservoir.

The examiner respectfully disagrees. The claims not preclude the washing ring include a reservoir in which the wash liquid can accumulate in the presence of the instrument. Furthermore, the examiner does not understand how the use of jet orifices to provide the liquid into the reservoir space would cause significant splashing since appellant's wash ring includes a cone section and channel 39, 72 in which the wash liquid would accumulate in the presence of the instrument and wash jet orifices 41.

Appellant also argues that although Harris '122 may teach a wash manifold, each instrument (aspiration tube 468) being washed has a single wash tube 488 with a jet orifice directed at it. Fig 14, it appears that the aspiration tubes are arranged linearly and do not pass through central opening of a wash device. Appellant further asserts

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there is no teaching of the wash tubes of different aspiration tubes interacting with each other, as they “inherently” would under claim 5 and its dependents (claims 6-9).

In response to appellant’s arguments against the references individually, the examiner respectfully points out that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. In this case, Ohlin is relied upon for the teaching of a wash device having a central opening configured to permit the instrument to pass through the central opening of the wash device. Harris is relied upon for the teaching of a wash manifold (486) charged with a high pressure stream (i.e., jet stream) of wash solution. The wash manifold has multiple wash tubes (484), each of the wash tubes having an angled fluid outlet/orifice (488) to direct wash solution at the aspiration tubes. Furthermore, instant claims 5 to 9 require at least two jet orifices distributed over an internal circumference of the wash ring. These claims do not require wash tubes of different aspiration tubes “interact with each other”.

Appellant has taken the position that that the lower probe portion 19 in Ohlin passes through the bore to create an “annular space” with the walls of the bore. Appellant argues that this annular space can only be created when the when a single instrument is passed through central opening. Appellant concludes that Ohlin does not teach an embodiment where the space is not annular.

Respectfully, the examiner does not agree with Appellant. The examiner contends that shape of the space between the instrument and the wash ring in Ohlin is not germane to the argument. The invention as currently claimed does not define the

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space between the instrument and the wash ring. Furthermore, Ohlin not teach away from wash ring surrounding at least two instruments (i.e., probes) because the Ohlin disclosure does not criticize, discredit, or otherwise discourage the wash ring from surrounding at least two probes. See *In re Fulton*, 391 F.3d 1195, 1201, 73 USPQ2d 1141, 1146 (Fed. Cir. 2004) and MPEP 2123. Furthermore, Ohlin does not set forth a particular range for the annular space. As discussed above, Ohlin states that the shape of the bore 26 in the wash ring and the relative dimensions bore 26 and the probe portion 19 to be cleaned are not critical, see col. 3 lines 33+. (Emphasis added.) Thus, it is possible for the Ohlin wash ring to simultaneously surround and wash a plurality of smaller probes, like the 18-gauge needles taught in Harris, and spray wash fluid at the instruments, as recited in the instant claims. Accordingly, it would be obvious to include in Ohlin a holder with at least two receptacles to hold multiple probes since the ordinary artisan would expect that this would increase instrument washing throughput.

Furthermore, the court has held that mere duplication of parts (i.e., more than one receptacle) has no patentable significance unless a new and unexpected result is produced. See MPEP 2144.04 and *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960). The examiner asserts that increasing the number instruments in the holder and wash device does not produce a new and unexpected result. Thus, appellant has failed to demonstrate that the washing device of Ohlin is not capable of surrounding at least two probes or that it would be rendered inoperable for its intended purpose (i.e., washing).

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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